843.

SUPREME COURT OF THE UNITED STATES.

No. 105.

THOMAS AP C. JONES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DIST. OF VIRGINIA.

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J. & G. S. Gideon, printers.

Pleas before the circuit court for the fourth circuit and eastern district of Virginia, May term, 1842.

The President of the United States of America, to the marshal of the [Seal of court.] eastern Virginia district, greeting:

You are hereby commanded to take Walter F. Jones, Thomas Ap Catesby Jones, and Duncan Robertson, if they be found within your district, and them safely keep, so that you have their bodies before the judge of the court of the United States for the eastern Virginia district, at the city of Richmond, on the twelfth day of May next, to answer the United States of America of a plea of debt for $20,000, damages $20, and have then there this writ.

Witness Peter V. Daniel, esq., judge of the said court, at Richmond, this twelfth day of March, one thousand eight hundred and forty, and in the 64th year of the independence of the United States of America.

HENRY GIBSON, *Cl'k.*

Endorsement.—"Action of debt on two bonds, conditioned for W. F. Jones' faithful discharge of duties as postmaster at Norfolk, Va., and no bail required.

NICHOLAS, *Dist. Att'y.*"

Returned.—"Executed on Thomas Ap Catesby Jones, by service being acknowledged, March 31st, 1840.

Service on 1 deft. - - - - -	$2
120 miles - - - - - -	6
	8 00

WM. A. CARTER, *D. M.*,
For ED. CHRISTIAN, *M. E. V. D.*

I hereby acknowledge service of the within writ, March 31, 1840.

THOS. AP C. JONES.

Walter F. Jones not to be found in the district. Executed on Duncan Robertson, May 4th, 1840.

WM. D. ROBERTSON,
For ED. CHRISTIAN, *M. E. V. D.*

The President of the United States of America, to the marshal of the [Seal of court.] eastern Virginia district, greeting:

You are hereby commanded, as you have heretofore been commanded, to take Walter F. Jones, Thomas Ap Catesby Jones, and Duncan Robertson, if they be found within your district, and them safely keep, so that you have their bodies before the judge of the court of the United States, for the eastern Virginia district, at the city of Richmond, on the

12th day of November next, to answer the United States of America of a plea of debt for $20,000, damages $20, and have then there this writ.

Witness Peter V. Daniel, esq., judge of the said court, at Richmond, this fifth day of June, one thousand eight hundred and forty, and in the 64th year of the independence of the United States of America.

HENRY GIBSON, *Cl'k.*

Endorsement.—"Action of debt on two bonds, conditioned for W. F. Jones' faithful discharge of duties as postmaster at Norfolk, Va., and no bail required.

NICHOLAS, *Dist. Att'y.*"

Return.—"Executed on Walter F. Jones September 2d, 1840.

Service on 1 deft. - - - - -	$2 00
160 miles, at 5 cents per mile - - - -	8 00
	$10 00

WM. A. CARTER, *D. M.*
For ED. CHRISTIAN, *M. E. V. D.*

UNITED STATES,

Eastern district of Virginia, to wit:

The United States of America complain of Walter F. Jones, Thomas Ap Catesby Jones, and Duncan Robertson, defendants, in custody, &c., of a plea that they render unto said plaintiffs the sum of ten thousand dollars, which to them they owe, and from them unjustly detain. For this, that the said defendants, on the 8th day of August, 1836, at the district aforesaid, and within the jurisdiction of the court of the United States, holden in and for the said district, by their certain writing obligatory, sealed with their seals, and to the court now here shewn, the date whereof is the same day and year aforesaid, acknowledged themselves to be held and firmly bound unto the said plaintiffs in the aforesaid sum of $10,000; and to the payment thereof, well and truly to be made, the said defendants firmly bound themselves, their heirs, executors and administrators, jointly and severally, by the said writing obligatory; which said writing obligatory was and is subject to a certain condition there underwritten, whereby, (after reciting to the effect following, to wit, that whereas the said Walter F. Jones is postmaster at Norfolk, in the State of Virginia,) it is provided and stipulated to the effect following, to wit: That if the said Walter F. Jones should well and truly execute the duties of said office according to law, and the instructions of the Postmaster General, and faithfully, once in three months, and oftener if thereto required, render accounts of his receipts and expenditures as postmaster to the General Post Office, in the manner and form prescribed by the Postmaster General in his several instructions to postmasters, and should pay the balance of all moneys that should come to his hands, for the postage of whatever is by law chargeable with postage in the manner prescribed by the Postmaster General

of the United States for the time being, and should also faithfully do and perform, as the agent for the General Post Office, all such acts and things as might be required of him by the Postmaster General, and moreover, should faithfully account with the plaintiffs, in the manner directed by the said Postmaster General, for all moneys, bills, bonds, notes, receipts, and other vouchers, which he, as agent as aforesaid, should receive for the use and benefit of the said General Post Office, then the said obligation should be void, else to remain in full force and virtue.

And the said plaintiffs aver, that the said condition of the said writing obligatory was not kept and performed, but was broken in this, that the said Walter F. Jones did not well and truly execute the duties of his said office of postmaster at Norfolk aforesaid, according to law, and the instructions of the Postmaster General, nor faithfully, once in three months, render accounts of his receipts and expenditures, as postmaster, to the General Post Office, in the manner and form prescribed by the Postmaster General in his several instructions to postmasters; and in this, that, during his continuance in the said office, to wit, on the 31st day of August, 1839, the sum of $6,000 had come to his hands for postages chargeable by law, and the further sum of $6,000 had been by him received for the use and benefit of the said General Post Office; which said sums, according to the tenor and effect of the said condition, he was bound to have paid over to the said plaintiffs, and which, though often requested, he neglected and refused to do. By reason of all which premises an action hath accrued to the plaintiffs to demand and have of the defendants the said sum of $10,000, above demanded. Nevertheless, the said defendants, or either of them, though often requested, the said sum of money, or any part thereof, to the plaintiffs have not paid, but the same to them to pay have hitherto wholly refused, and still do refuse, to their damage of $10,000; and therefore they bring suit, &c.

NICHOLAS, *Dist. Atto.*

Tuesday 17*th November*, 1840.

THE UNITED STATES OF AMERICA, plff's, against WALTER F. JONES, def't. } In debt.

And

THE SAME, plff's, against WALTER F. JONES, Thomas Ap Catesby Jones, and Duncan Robertson, def'ts. } In debt.

On the motion of the defendants by their attorney, and for good cause shewn to the court, it is ordered that these causes be transferred to the United States court for the fifth circuit and eastern district of Virginia, for trial, and for further proceedings to be had therein.

At a court of the United States, for the fifth circuit and eastern dis-

trict of Virginia, holden at the City Hall, in the city of Richmond, on Saturday, 21st November, 1840.

THE UNITED STATES OF AMERICA, plff's, against WALTER F. JONES, def't. } In debt.

And

THE SAME, plff's, against WALTER F. JONES, Thos. Ap Catesby Jones, and Duncan Robertson, def'ts. } In debt.

These causes which have by consent of parties been removed to this court, are by like consent ordered to be placed on the docket of this court; and on the motion of the defendants, by their attorney, and for reasons appearing to the court, the same are continued until the next term, at their cost.

May 18*th*, 1841.

THE UNITED STATES OF AMERICA, plff's, against WATER F. JONES, Thomas Ap Catesby Jones, and Duncan Robertson, def'ts. } In debt.

This cause, and the one preceding, is, and which by consent of parties had been, removed to this court, from the U. S. court for the E. V. district, abates by the death of Walter F. Jones as to him; and on the motion of the other defendants, by their counsel, is continued at their cost.

Tuesday, 30*th November*, 1841.

This day came as well the plaintiffs as the defendant Thomas Ap Catesby Jones, by their attorneys, and the said defendant filed a special plea in writing, to which the plaintiffs replied generally, and issue is joined; he also filed a second plea in writing, to which the plaintiffs filed their replication, to which replication the said defendant filed his rejoinder, to which rejoinder the plaintiffs filed their surrejoinder, and issue is joined; the said defendant filed his third plea in writing, to which the plaintiffs replied generally, and issue is joined; and the defendant further filed his fourth plea in writing, to which the plaintiffs replied generally, and issue is joined; whereupon came a jury, to wit: Edwin Burton, G. P. Crump, Wm. W. Dabney, James Griffen, Saml. Ellis, Rd. G. Tunstall, A. C. Brander, S. M. Dandridge, Hiram Bragg, W. W. Timberlake, Hugh A. Watt, and Th. Talley, who being elected, tried, and sworn, well and truly to try the issues joined in this cause, and also diligently to enquire of damages between the plaintiffs and the other defendant in this case, Duncan Robertson, who having partly heard the evidence, were adjourned until to morrow morning at eleven o'clock. The following are copies of the papers referred to in the foregoing order.

First plea of deft Jones.

And the said defendant, Thomas Ap Catesby Jones, by his attorney, comes and defends the wrong and injury, when, &c., and he craves oyer of the said writing obligatory in the declaration mentioned, and of the condition thereof, and the same are read to him in these words:

"Know all men by these presents, that we, Walter F. Jones, of Norfolk, in the county of Norfolk, State of Virginia, and Thomas Ap Catesby Jones, and Duncan Robertson, are held and firmly bound unto the United States of America, in the just and full sum of ten thousand dollars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

In witness whereof, we have hereunto subscribed our names, and affixed our seals, this eighth day of August, in the year of our Lord one thousand eight hundred and thirty-six.

The condition of the subject is such, that whereas the above bounden Walter F. Jones is postmaster at Norfolk aforesaid: Now, if the said Walter F. Jones shall well and truly execute the duties of the said office, according to law and the instructions of the Postmaster General, and faithfully, once in three months, and oftener if thereto required, render accounts of his receipts and expenditures as postmaster, to the General Post Office, in the manner and form prescribed by the Postmaster General in his several instructions to postmasters, and shall pay the balance of all moneys that shall come to his hands for the postage of whatever is by law chargeable with postage, in the manner prescribed by the Postmaster General of the United States for the time being, and shall also faithfully do and perform, as agent for the General Post Office, all such acts and things as may be required of him by the Postmaster General; and moreover shall faithfully account with the United States, in the manner directed by the said Postmaster General, for all moneys, bills, bonds, notes, receipts, and other vouchers which he, as agent as aforesaid, shall receive for the use and benefit of said General Post Office, then the above obligation to be void.

WALTER F. JONES, [SEAL.]
THOS. AP C. JONES, [SEAL.]
D'N ROBERTSON. [SEAL.]

Signed, sealed, and delivered in the presence of—
JAMES H. NORTH,
as to T. Ap C. Jones.
W. B. SINCLAIR,
as to Duncan Robertson.

I hereby certify, that Duncan Robertson is good and sufficient surety to the amount of the penalty in the foregoing bond.

M. KING, *Mayor.*

DISTRICT OF COLUMBIA, *county of Washington, sct:*

I certify, hereby, that Thomas Ap Catesby Jones is good and sufficient surety to the amount of the penalty in the foregoing bond.

FLEET SMITH, [SEAL.]

A justice of the peace for the county aforesaid.

Which being read and heard, the said defendant says, that the United States ought not to have or maintain their action aforesaid thereof against him, because, he says, that the said Walter F. Jones did, from time to time, and at all times after making the said writing obligatory, and the said condition thereof, well and truly observe, perform, fulfil and keep, all and singular, the articles, clauses, payments, conditions and agreements, in the said condition of the said writing obligatory specified, comprised and mentioned, in all things therein contained on his part and behalf to be observed, performed, fulfilled, and kept, according to the tenor and effect, true intent and meaning, of the said condition. And this the said defendant is ready to verify. Wherefore he prays judgment if the United States ought to have or maintain their action aforesaid thereof against him, &c.

Replication to 1st plea.

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1. And the said plaintiffs, as to the plea of the said defendant, Thomas Ap Catesby Jones, by him first above pleaded, say, that the said plaintiffs, by reason of any thing by the said defendant in that plea alleged, ought not to be barred from having and maintaining their action aforesaid thereof against him, because, they say, that the said Walter F. Jones did not well and truly perform and keep the conditions of the said writing obligatory, but wholly and entirely failed to perform and keep the said conditions. And of this the plaintiffs put themselves upon the country, &c.

2nd plea of defendant Jones.

2nd plea. And the said defendant, Thomas Ap Catesby Jones, for further plea in this behalf by leave of the court for this purpose first had and obtained, says, that the United States ought not to have or maintain their action aforesaid thereof against him, because, he says, that, by an act of Congress, entitled "an act to reduce into one the several acts establishing and regulating the Post Office Department," approved the 3d March, 1825, it was, among other things, enacted and provided, that there should be established at the Seat of Government of the United States a General Post Office, under the direction of the Postmaster General; and that the Postmaster General should establish post offices and appoint postmasters, at such places as should appear to him expedient, on the post roads that were or might be established by law;

and that the Postmaster General should obtain from the postmasters their accounts and vouchers, for their receipts and expenditures, once in three months, or oftener, with the balances thereon arising in favor of the General Post Office; and that, if any postmaster, or other person authorized to receive the postage of letters and packets, should neglect or refuse to render his accounts, and pay over to the Postmaster General the balance by him due at the end of every three months, it should be the duty of the Postmaster General to cause a suit to be commenced against the person or persons so neglecting or refusing. And it was, by the said act, further enacted and provided, that it shall be the duty of the Postmaster General, upon the appointment of any postmaster, to require and take of such postmaster bond, with good and approved security, in such penalty as he shall adjudge sufficient, conditioned for the faithful discharge of the duties of such postmaster, required by law, or which shall be required by any instruction or general rule for the government of the department: provided, however, that if default shall be made by the postmaster aforesaid at any time, and the Postmaster General shall fail to institute suit against such postmaster and said sureties, within two years after such default shall be made, then, and in that case, the said sureties shall not be held liable to the United States, nor shall suit be instituted against them. And the said defendant says, that the said Walter F. Jones was duly appointed postmaster, at Norfolk, in Virginia, on the day of in the year 1836; and afterwards, on the 8th day of August, 1836, he, together with his sureties, duly executed his official bond, in the declaration mentioned, with condition for the due execution of the duties of the said office; on which bond the said defendant was bound as one of the sureties of the said Walter F. Jones.

And the said defendant further says, that after the said Walter F. Jones was appointed postmaster at Norfolk as aforesaid, and after his said official bond was executed and delivered, and during his continuance in the said office, the said Walter F. Jones did, at divers times, more than two years before the institution of this suit, to wit, during the course of the year 1837, make sundry defaults in his said office, in failing to pay over to the Postmaster General, or into the Treasury, divers large sums of money and balances by him received in virtue of his said office, and appearing by his accounts, duly made up and returned quarterly, to be by him due and owing to the General Post Office; and that the Postmaster General did fail to institute any suit, for and on account of such defaults, against the said Walter F. Jones, postmaster at Norfolk as aforesaid, and his sureties, for more than two years after such default by the said Walter F. Jones made as aforesaid. And this the said defendant is ready to verify. Wherefore he prays judgment if the United [States] ought to have or maintain their action aforesaid thereof against him, &c.

Replications of plaintiffs to 1st, 2d, 3d, and 4th pleas of defendant Jones.

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1. And the said plaintiffs, as to the said plea of the said defendant by him secondly above pleaded, say, that the said plaintiffs, by reason of any thing by the said defendant in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the said defendant, because, they say, that the said sundry supposed defaults stated in the said plea to have been made by the said Walter F. Jones, (to wit, during the course of the year 1837,) in failing to pay over to the Postmaster General, or to the Treasury, divers large sums of money and balances due and owing by him to the General Post Office, did not, nor did either of said supposed defaults, continue and remain for the space of two years, but that each and all of the said supposed defaults were liquidated, discharged, and extinguished, by payments subsequently made by the said Walter F. Jones to the General Post Office, within two years next after the said supposed defaults respectively occurred; and that the said Postmaster General was not bound or required, by the provisions of the said act of Congress in the said plea mentioned, to institute suit against the said Walter F. Jones and his said sureties, for or on account of the said supposed defaults, or any or either of them, so as aforesaid discharged and liquidated. And this the said plaintiffs are ready to verify. Wherefore, they pray judgment, and their damages by them sustained by reason of the said breaches assigned of the said condition of the obligation in the declaration mentioned, to be adjudged to them.

3. And the said plaintiffs, as to the said plea of the said defendant by him thirdly above pleaded, say, that the said plaintiffs, by reason of any thing by the said defendant in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the said defendant, because, they say, that the said supposed divers defaults stated in the said plea to have been made by the said Walter F. Jones in failing to pay the balances appearing by his quarterly accounts to be due and owing for each of the quarters ending the 31st day of March, 1837, the 30th day of June, 1837, and the 30th day of September, 1837, did not, nor did either of the said supposed defaults, continue and remain for the space of two years; but that each and all of the said supposed defaults were discharged, liquidated, and cancelled, by payments subsequently made by the said Walter F. Jones to the General Post Office, within two years next after the said supposed defaults respectively occurred; and that the said Postmaster General was not bound or required by law to institute suit against the said Walter F. Jones and his said sureties, for or on account of any or either of the said supposed defaults so as aforesaid discharged, liquidated and cancelled; and that the said defendant is not discharged from liability to the United States,

as one of the sureties of the said Walter F. Jones, by reason of the omission of the Postmaster General to institute suit for or on account of the said supposed defaults, or any or either of them, thus liquidated and cancelled as aforesaid; and this the said plaintiffs are ready to verify. Wherefore, they pray judgment, and their damages by them sustained by reason of the said breaches assigned of the said condition of the obligation in the declaration mentioned, to be adjudged to them.

4. And the said plaintiffs, as to the said plea of the said defendant by him fourthly above pleaded, say, that the said plaintiffs, by reason of any thing by the said defendant in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against him, because, they say, that the said several causes of action in the said declaration mentioned, and each and every of them, did accrue to the said plaintiffs within two years next before the commencement of this suit, in manner and form as the said plaintiffs have above thereof complained against him, to wit, at the district, and within the jurisdiction aforesaid. And this the said plaintiffs pray may be inquired of by the country, &c.

3rd and 4th pleas of def't Jones.

3rd plea. And the said defendant, Thomas Ap Catesby Jones, for further plea in this behalf, by leave of the court for this purpose first had and obtained, says, that the United ought not to have or maintain their action aforesaid thereof against him, because, he says, that after the said Walter F. Jones had been appointed to the said office of postmaster at Norfolk, in Virginia, as aforesaid, and after his official bond for the faithful execution of the duties of his office had been executed and delivered by him, and by the said defendant, and a certain Duncan Robertson, his sureties as aforesaid, and during his continuance in office, the said Walter F. Jones did, at divers times, more than two years next before the institution of this action, make divers defaults in failing to pay over to the Postmaster General, or into the treasury of the United States, divers large sums of money, and balances of money, by him received in virtue of his said office, and appearing by his accounts, duly made up and returned quarterly, to be by him due and owing to the General Post Office; that is to say, the said Walter F. Jones failed to pay the balances appearing by his said quarterly accounts to be by him due and owing, for each of the quarters ending the 31st day of March, 1837, the 30th day of June, 1837, and the 30th day of September, 1837. And the said defendant in fact says, that, notwithstanding such defaults of the said Walter F. Jones, the Postmaster General did fail to institute, or cause to be instituted, any suit against the said Walter F. Jones, and his sureties, for more than two years after such defaults aforesaid by the said Walter F. Jones made as aforesaid; and so, according to the statute in such case made and provided, the said defendant, as one of the sureties of the said Walter F. Jones, ought not to be held liable to the United States, nor ought suit be instituted against him. And this he is ready to verify. Wherefore he prays judgment, &c.

4th plea. And the said defendant, Thomas Ap Catesby Jones, for further plea in this behalf, by leave of the court for this purpose first had and obtained, says, that the United States ought not to have or maintain their action aforesaid thereof against him, because, he says, that the said supposed cause and causes of action, in the declaration mentioned, did not, nor did any or either of them, accrue within two years next before the commencement of this suit, in manner and form as the United States have above thereof complained against him. And this he is ready to verify. Wherefore he prays judgment, &c.

Rejoinder of defendant Thos. Ap C. Jones.

2. And the said defendant, Thomas Ap Catesby Jones, as to the replication of the plaintiffs to the said second plea of him, the said defendant, says, that the plaintiffs ought not, by reason of any thing by them in that replication alleged, to have or maintain their action aforesaid thereof against him, because, he says, that the said defaults, stated in the said second plea of the said defendant to have been made *to have been made* by the said Walter F. Jones, to wit, during the course of the year 1837, in failing to pay to the Postmaster General, or to the treasury, divers large sums of money due and owing by him to the General Post Office, did each and all of them continue and remain for the space of two years and the said defaults, or either, or any of them, were not liquidated, discharged, and extinguished, by payments subsequently made by the said Walter F. Jones to the General Post Office, within two years next after the said defaults respectively occurred. And this the said defendant prays may be inquired of by the country, &c.

3. And the said defendant, Thomas Ap Catesby Jones, as to the replication of the plaintiffs to the said third plea of him, the defendant, says, that the plaintiffs ought not, by reason of any thing by them alleged in that replication, to have or maintain their action aforesaid thereof against him, because, he says, that the said defaults stated in the said defendant's said third plea to have been made by the said Walter F. Jones in failing to pay the balances, appearing by his quarterly returns to be due and owing, for each of the quarters ending the 31st day of March, 1837, the 30th day of June, 1837, and the 30th day of September, 1837, did, each and all of them, continue and remain for the space of two years, and the said defaults, or either of them, were not discharged, liquidated, and cancelled, by payments subsequently made by the said Walter F. Jones to the General Post Office, within two years next after the said defaults respectively occurred. And this the defendant prays may be inquired of by the country, &c.

4. And the said defendant, Thomas Ap Catesby Jones, as to the said replication of the plaintiff to the fourth plea of him, the defendant. And which the plaintiffs pray may be enquired of, custody, doth the like.

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And the said plaintiffs, as to the said rejoinder of the said defendant,

Thomas Ap Catesby Jones, to the said replication of the said plaintiffs to the said second plea of the said defendant, and which the said defendant hath prayed may be inquired of by the country, do the like.

And the said plaintiffs, as to the said rejoinder of the said defendant, Thomas Ap Catesby Jones, to the said replication of the said plaintiffs to the said third plea of the said defendant, and which the said defendant hath prayed may be inquired of by the country, do the like.

Wednesday, 1st December, 1841.

This day came again as well the plaintiffs, as the defendant Thomas Ap Catesby Jones, by their attorneys, and the same jury sworn on yesterday in this cause appeared in court according to their adjournment, and having fully heard the evidence, and a portion of the arguments of counsel, were adjourned until to-morrow morning, at eleven o'clock.

Thursday, 2nd December, 1841.

This day came again as well the plaintiffs, as the defendant Jones, by their attorneys, and the same jury heretofore sworn in this cause, appeared in court according to their adjournment, and were adjourned until to-morrow morning, at eleven o'clock.

Friday, 3rd December, 1841.

This day came again as well the plaintiffs, as the defendant Jones, by their attorneys, and the same jury heretofore sworn in this cause appeared in court, according to their adjournment, and were adjourned until to-morrow, at eleven o'clock.

Saturday, 4th December, 1841.

This day came again as well the plaintiffs, as the defendant Jones, by their attorneys, and the same jury heretofore sworn in this cause, appeared in court according to their adjournment; whereupon, by consent of the parties, and with the assent of the court, George P. Crump, one of the jurors aforesaid, was withdrawn, and the rest of the jury from rendering their verdict discharged. And the cause is continued till the next term, for a new trial to be had therein.

This suit was transferred to the United States court for the 4th circuit and eastern district of Virginia, by virtue of an act of Congress passed on the 16th day of August, 1842, entitled "An act supplementary to the act entitled "An act to amend the judicial system of the United States."

Friday, 3d June, 1842.

This day came the parties, by their attorneys, and thereupon came a jury, to wit, Jacob Hall, William B. Harwood, Thomas Crouch, Newton Hill, George W. Dixon, George P. Crump, Lewis Hill, William J. Taylor, William McCreery, E. K. Gilbert, John G. McCredie, and William H. Christian, who, being elected, tried, and sworn, well and truly to try the issues joined in this cause, and also diligently to inquire

of damages between the plaintiffs and the defendant, Duncan Robertson, and having partly heard the evidence, were adjourned until to-morrow morning, at eleven o'clock.

Saturday, 4th June, 1842.

This day came the parties, by their attorneys, and the same jury sworn in this cause on yesterday, appeared in court according to their adjournment, and having partly heard the evidence, were adjourned until Monday morning, at twelve o'clock.

Monday, 6th June, 1842.

This day came again the parties, by their attorneys, and the same jury sworn in this cause on yesterday, appeared in court according to their adjournment, and having further heard the evidence, were adjourned until to-morrow morning, at eleven o'clock.

Tuesday, 7th June, 1842.

This day came again the parties, by their attorneys, and the same jury heretofore sworn in this cause, appeared in court according to their adjournment, and having fully heard the evidence, brought in a verdict in these words: "We of the jury find for the plaintiffs, upon the issues joined between the plaintiffs and the defendant, Thomas Ap. Catesby Jones, and we assess their damages, occasioned by the breaches assigned in the declaration of the conditions of the writing obligatory in the said declaration mentioned, to four thousand three hundred and eighty-seven dollars and nine cents, with interest thereon, from the 31st day of August, 1839, until paid; and upon the writ of inquiry as to the defendant, Duncan Robertson, we assess the plaintiffs' damages to the aforesaid sum of four thousand three hundred and eighty-seven dollars and nine cents, with interest thereon, from the 31st day of August, 1839, until payment." Therefore, it is considered by the court, that the plaintiffs recover against the said defendants ten thousand dollars, the debt in the declaration mentioned; and the defendant in mercy, &c.

Memorandum: That, upon the trial of this cause, the defendants, by their attorney, excepted to an opinion of the court given against them on the said trial, and tendered their bill of exceptions, which was received, signed, and sealed, by the court, and ordered to be made part of the record in the said cause, and is in these words, to wit:

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Be it remembered, that upon the trial of the issues joined in this cause, the attorney for the United States, to support the issues on their part, offered in evidence a statement of the account between the said Walter F. Jones, late postmaster at Norfolk, Virginia, and the United States; and the certificate of C. K. Gardner, auditor of the Treasury for the Post Office Department, thereto subjoined, with the seal of office affixed, in the following words and figures, to wit:

DR. *Walter F. Jones, late Postmaster, Norfolk, Virginia,*

To balances due the United States on his quarterly returns as postmaster, viz:	
From December 13 to December 31, 1830 - -	$341 99
From January 1 to April 1, 1831 - - -	1,908 41
From April 1 to July 1, 1831 - - -	2,050 43
From July 1 to October 1, 1831 - - -	1,718 61
From October 1 to December 31, 1831 - -	1,952 57
From January 1 to April 1, 1832 - - -	2,307 32
From April 1 to July 1, 1832 - - -	2,057 85
From July 1 to October 1, 1832 - - -	2,033 33
From October 1 to December 31, 1832 - -	2,386 39
From January 1 to April 1, 1833 - - -	2,417 15
From April 1 to July 1, 1833 - - -	2,526 19
From July 1 to October 1, 1833 - - -	2,490 09
From October 1 to December 31, 1833 - -	2,465 24
From January 1 to April 1, 1834 - - -	2,364 78
From April 1 to July 1, 1834 - - -	2,282 87
From July 1 to October 1, 1834 - - -	2,149 94
From October 1 to December 31, 1834 - -	2,258 26
From January 1 to April 1, 1835 - - -	2,187 40
From April 1 to July 1, 1835 - - -	1,980 29
From July 1 to September 30, 1835 - - -	1,911 71
From October 1 to December 31, 1835 - -	2,077 15
From January 1 to March 31, 1836 - - -	2,378 65
From April 1 to June 30, 1836 - - -	2,221 24
Amount carried over - -	48,467 86

in account with the United States. Cr.

1830.		
Dec. 31	By cash - - - - -	$320 00
1831.		
Jan. 12	" do - - - - -	21 51
Jan. 31	" do - - - - -	382 49
Feb. 26	" do - - - - -	447 00
March 31	" do - - - - -	870 51
April 13	" do - - - - -	208 41
April 30	" do - - - - -	503 00
May 31	" do - - - - -	500 00
June 30	" do - - - - -	827 00
July 23	" do - - - - -	226 29
August 2	" do - - - - -	315 21
Aug. 31	" do - - - - -	430 00
Sept. 30	" do - - - - -	1,107 79
Oct. 31	" do - - - - -	254 00
Dec. 1	" do - - - - -	555 00
Dec. 31	" do - - - - -	748 98
1832.		
Jan. 31	" do - - - - -	232 00
Feb. 29	" do - - - - -	647 00
March 31	" do - - - - -	1,373 51
May 1	" do - - - - -	412 00
May 31	" do - - - - -	386 00
June 30	" do - - - - -	1,108 80
August 4	" do - - - - -	533 26
Sept. 4	" do - - - - -	454 10
Sept. 29	" do - - - - -	1,031 11
Oct. 6	" do - - - - -	315 00
Nov. 2	" do - - - - -	453 79
Dec. 8	" do - - - - -	298 65
Dec. 31	" do - - - - -	1,226 10
1833.		
Jan. 23	" do - - - - -	500 00
Jan. 31	" do - - - - -	182 05
Feb. 28	" do - - - - -	453 44
March 30	" do - - - - -	1,125 86
April 30	" do - - - - -	404 13
May 31	" do - - - - -	455 44
June 29	" do - - - - -	1,145 35

Dr. *Walter F. Jones, late postmaster, Norfolk, Virginia,*

Amount brought over - -	$48,467 86
Amount carried over - -	$48,467 86

in account with the United States—Continued. CR.

1833.		
August 1	By cash - - - - -	$500 00
August 31	" do - - - - -	357 28
Sept. 30	" do - - - - -	1,271 75
Oct. 31	" do - - - - -	474 67
Nov. 30	" do - - - - -	388 50
Dec. 31	" do - - - - -	1,263 30
1834.		
Jan. 31	" do - - - - -	376 38
Feb. 28	" do - - - - -	702 50
March 31	" do - - - - -	998 51
April 3	" do - - - - -	266 60
May 1	" do - - - - -	310 04
June 3	" do - - - - -	400 00
June 14	" do - - - - -	417 67
June 30	" do - - - - -	667 09
July 28	" do - - - - -	823 75
August 7	" do - - - - -	400 00
Sept. 1	" do - - - - -	356 73
Sept. 19	" do - - - - -	297 75
Sept. 27	" do - - - - -	681 00
Sept. 30	" do - - - - -	507 00
Oct. 28	" do - - - - -	391 75
Nov. 4	" do - - - - -	246 10
Dec. 1	" do - - - - -	552 30
Dec. 31	" do - - - - -	826 67
	Amount carried over - -	33,932 12
1835.	By amount brought over - -	$33,932 12
Jan. 31	" do - - - - -	435 00
Feb. 7	" do - - - - -	207 00
Feb. 16	" do - - - - -	216 00
March 2	" do - - - - -	424 00
March 21	" do - - - - -	307 00
March 31	" do - - - - -	452 84
April 30	" do - - - - -	456 05
May 22	" do - - - - -	230 00
June 1	" do - - - - -	273 26
June 30	" do - - - - -	586 76
August 1	" do - - - - -	208 00
Sept. 1	" do - - - - -	508 00
October 1	" do - - - - -	740 00
Nov. 2	" do - - - - -	491 08

DR. *Walter F. Jones, late postmaster, Norfolk, Virginia,*

To amount brought over - -	$48,467 86
	$48,467 86
To balance transferred from old acc. - - -	$345 50
To balances due the United States on his quarterly returns as postmaster, viz:	
From July 1 to Sept. 30, 1836 - - -	2,073 77
" Oct. 1 " Dec. 31, " - - -	2,488 16
" Jan. 1 " March 31, 1837 - - -	2,746 04
" April 1 " June 30, " - - -	2,634 93
" July 1 " Sept. 30, " - - -	2,187 79
" Oct. 1 " Dec. 31, " - - -	2,298 13
" Jan. 1 " March 31, 1838 - - -	2,450 65
" April 1 " June 30, " - - -	2,422 47
" July 1 " Sept. 30, " - - -	2,233 48
" Oct. 1 " Dec. 31, " - - -	2,618 26
" Jan. 1 " March 31, 1839 - - -	2,829 60
" April 1 " April 3, " - - -	53 11
Amount carried over - - -	$27,381 89

in account with the United States—Continued. Cr.

1835.		
Nov. 14	By cash - - - -	$1,645 00
Nov. 30	" do - - - -	634 00
Dec. 28	This sum paid for mail bags - -	8 75
Dec. 31	By cash - - - -	893 00
1836.		
Jan. 16	" do - - - -	565 00
Feb. 1	" do - - - -	405 00
Feb. 20	This sum paid for mail bags - -	2 50
Feb. 29	By cash - - - -	660 00
March 31	" do - - - -	1,057 00
May 7	" do - - - -	875 00
June 2	" do - - - -	472 00
July 9	" do - - - -	862 00
August 6	" do - - - -	576 00
	Balance transferred to new account -	345 50
		48,467 86
Sept. 6	By cash - - - -	$525 00
Oct. 1	" do - - - -	594 00
" 15	" do - - - -	205 00
Nov. 5	" do - - - -	530 00
Dec. 7	" do - - - -	590 00
" 31	" do - - - -	670 00
1837.		
Feb. 1	" do - - - -	662 00
" 28	" do - - - -	850 00
April 1	" do - - - -	1,046 00
" 15	" do - - - -	200 00
May 6	" do - - - -	550 00
Aug. 21	" draft No. 168 - - -	33 35
Oct 30	" do favor Barney Bowers - -	23 13
Dec. 16	" do No. 1014 - - -	2,239 50
" 19	" do " 1080 - - -	40 21
" 19	" do " 1084 - - -	78 72
" 19	" do " 1085 - - -	35 14
" 29	" do " 1427 - - -	63 00
" 29	" do " 1428 - - -	39 82
" 29	" do " 1461 - - -	10 09
" 29	" do " 1470 - - -	266 05
" 30	" do " 1497 - - -	77 13

DR. *Walter F. Jones, late Postmaster, Norfolk, Virginia,*

To amount brought over - -	$27,381 89
Amount carried over - -	$27,381 89

in account with the United States—Continued. Cr.

1838.				
Jan.	25	By draft No. 2041	- - -	$1,177 50
"	29	" do " 2165	- - -	2,161 50
Feb.	21	" do " 2799	- - -	77 30
"	22	" do " 2808	- - -	47 36
"	22	" do " 2814	- - -	63 91
"	24	" do " 2863	- - -	326 14
"	26	" do " 2906	- - -	7 64
"	26	" do " 2920	- - -	65 25
March	5	" do " 3079	- - -	384 51
"	20	" do " 3364	- - -	34 06
"	21	" do " 3397	- - -	41 96
April	14	" do " 3604	- - -	1,000 00
May	21	" do " 4557	- - -	44 49
"	21	" do " 4562	- - -	48 23
"	21	" do " 4563	- - -	434 66
"	21	" do " 4590	- - -	76 77
June	2	" do " 4740	- - -	64 13
"	2	" do " 4742	- - -	7 52
"	2	" do " 4743	- - -	30 74
"	2	" do " 4755	- - -	208 18
"	2	" do " 4758	- - -	40 37
"	19	" do " 5056	- - -	39 10
July	19	" do " 5462	- - -	53 21
"	26	" do " 5503	- - -	31 91
Aug.	21	" do " 6235	- - -	76 92
"	21	" do " 6239	- - -	26 79
"	21	" do " 6241	- - -	62 08
"	21	" do " 6242	- - -	392 94
"	28	" do " 6422	- - -	227 15
Sept.	7	" do " 6718	- - -	17 94
"	13	" do " 6872	- - -	382 21
"	14	" do " 6875	- - -	64 94
"	14	" do " 6876	- - -	43 55
"	24	" do " 7082	- - -	61 77
Nov.	14	" do " 7994	- - -	750 00
"	28	" do " 8356	- - -	297 77
		Amount carried over	- -	18,198 64

DR. *Walter F. Jones, late Postmaster, Norfolk, Virginia,*

To amount brought over - - - - -	$27,381 89
	$27,381 89
To balance - - - - - - -	5,515 89
To interest from August, 1839, to	

in account with the United States—Continued. CR.

1838.				
Dec. 4	By	amount brought over	- -	$18,198 64
" 4	By	draft No. 8448	- - -	62 54
" 4	"	do " 8452	- - -	42 94
" 4	"	do " 8455	- - -	77 19
" 4	"	do " 8465	- - -	98 57
" 15	"	do " 8745	- - -	50 26
" 15	"	do " 8746	- - -	43 64
" 17	"	do " 8768	- - -	132 79
" 31	"	do " 8967	- - -	88 52
" 31	"	do " 8968	- - -	206 48
1839.				
Jan. 19	"	do " 9100	- - -	45 00
Feb. 19	"	do " 9792	- - -	756 00
" 20	"	do " 9801	- - -	863 29
March 13	"	do " 271	- - -	46 04
" 13	"	do " 274	- - -	38 56
Aug. 31	"	cash	- - -	1,121 54
		Balance	- - -	5,515 89
				$27,381 89

I certify, that the foregoing is a true statement of the account of Walter F. Jones, late postmaster at Norfolk, Virginia, as audited and adjusted at this office.

In testimony whereof, I have hereunto subscribed my name, and caused to be affixed my seal of office, at Washington, this fifth [SEAL.] day of March, in the year one thousand eight hundred and forty.

C. K. GARDNER,
Auditor of the Treasury for the Post Office Department.

And the defendant, to support the issues joined on his part, offered in evidence a letter from the Postmaster General to the said Walter F. Jones, dated the 19th December, 1837, in the following words and figures, to wit:

"POST OFFICE DEPARTMENT,
December 19th, 1837.

"WALTER F. JONES, ESQ.,
Postmaster at Norfolk, Va.

SIR: I drew on you yesterday in favor of William Jones, esq., postmaster at Washington, D. C., for five thousand dollars, payable at sight; and by my direction he has exchanged the draft with the Treasury Department for a like sum in Treasury notes. The sum of five thousand dollars in specie, now in your hands, is therefore the property of the Treasury Department; and as the draft has been sent to the Branch Bank of Virginia for collection, I request you, as agent for the Treasury, to place the said sum of five thousand dollars, on special deposite in that bank, to the credit of the Treasurer of the United States, and forward him a certificate of deposite in the following form, viz:

BANK OF ,
December , 1837.

The Treasurer of the United States has credit in this bank for thousand dollars in specie, deposited by , postmaster of for which I have signed duplicate receipts.

$ (Signed,) A. B., *cashier*.

Very respectfully, your obedient,
AMOS KENDALL.

And this being all the evidence in the cause, the attorney for the United States moved the court to instruct the jury, "that all payments made by the postmaster, Walter F. Jones, to the General Post Office, after the execution of his official bond, on the 8th of August, 1836, and subsequently to any default at the end of a quarter, without any direction by him or by the Postmaster General as to the application of said payments, should be applied in the first instance to extinguish each successive default in the order in which it fell due; and if by such application of said payments the jury shall believe from the evidence, that all of the defaults which occurred two years before the institution of this suit were extinguished within two years after the same were respectively committed, that the act of Congress, which limits the institution of suits against the sureties of a postmaster to two years after the default of the principal, has no application to this case, and cannot affect in any degree the plaintiffs' right to recover in this action." And the counsel for the defendant moved this court to instruct the jury.

"1st. That if the jury shall find, that the said deputy postmaster, Walter F. Jones, committed any default or defaults in office at any time or times, more than two years before the commencement of this suit, and *and* that such default or defaults were then known to the

Postmaster General; and further, that the said deputy postmaster continued in default to an equal or greater amount thenceforth, until he was discharged from office, that the Postmaster General failed to institute, or cause to be instituted, a suit against the said deputy postmaster and his sureties, for two years from and after such default or defaults were made, then the defendant, Thomas Ap Catesby Jones, one of the sureties of the said deputy postmaster, is not liable to the United States, nor can any suit be maintained against him on the official bond of the said deputy postmaster, wherein the defendant was bound as one of the sureties, for any default or defaults committed by the said deputy postmaster.

2d. That as this suit was commenced on the 12th March, 1840, the jury should inquire, whether any default was committed by the said deputy postmaster, Walter F. Jones, in not duly paying over any balance or balances of money which became due from him on account of collections by him officially made before the end of the quarter next preceding the 12th March, 1838, namely, the quarter ending on the 31st December, 1837. And if the jury shall find, that the said deputy postmaster was so in default in not duly paying over such balances or balance due from him on account of collections by him officially made before the end of the quarter ending the 31st December, 1837, and that such default was then known to the Postmaster General, then they should apply, towards the discharge of such balances or balance, all such payments made by the said deputy postmaster during his continuance in office subsequently to the 31st of December, 1837, as they shall find to have been made out of moneys officially collected by him before that date, or out of his private funds; and they should apply all other payments made by him after that date, and during his continuance in office, towards the discharge of the balances or balance which became due from him on account of moneys by him officially collected after the 31st December, 1837, during his continuance in office.

3d. And that, as to the payment of $\$1,121\ \frac{54}{100}$, which was made by the said deputy postmaster after he was discharged from his office, the jury should inquire whether that payment was made by him out of moneys remaining in his hands on account of collections officially made by him before the 31st December, 1837, or out of his own private funds; or whether that payment was made out of moneys officially collected by him during his continuance in office, subsequently to the 31st December, 1837; and if the jury shall find that that payment was made, and of moneys remaining in his hands of collections by him officially made prior to the 31st December, 1837, or out of his own private funds, then the jury should apply that payment towards the discharge of the balance which was due from him on the 31st December, 1837; but if the jury shall find that that payment of $\$1,121\ \frac{54}{100}$ was made by the said deputy postmaster out of money officially collected by him during his continuance in office subsequently to the 31st December, 1837, then they should apply the said payment towards the balance that accrued and became due from him on account of moneys officially collected by

him during his continuance in office subsequently to the 31st December, 1837. "Whereupon, the court gave the said instruction prayed by the attorney for the United States, and refused to give the said instructions prayed by the counsel for the defendant; to which opinion of the court, the defendant by his counsel excepted, and prayed the court to sign and seal this bill of exceptions, which is done accordingly."

J. Y. MASON. [SEAL.]

But this judgment is to be discharged by the payment of the damages assessed as aforesaid, with the interest thereon, allowed to be computed at the rate of six [per cent.] per annum, and the costs.

EASTERN DISTRICT OF VIRGINIA, *sct:*

I, Philip Mayo, clerk of the United States' court for the fourth (late fifth) circuit and eastern district of Virginia, do hereby certify, that the foregoing is a true transcript of the record in the case of the United States against Thomas Ap Catesby Jones and others, decided in said court on Tuesday, the 7th day of June, 1842.

In testimony whereof, I hereunto set my hand and affix the seal of the said court, this 21st day of November, 1844, and 69th year of the independence of the United States of America. [SEAL.]

P. MAYO, *Clerk.*

JONES,
vs.
UNITED STATES OF AMERICA. } Petition for writ of error.

To the honorable Roger B. Taney, chief justice of the Supreme Court of the United States.

The petition of Thomas Ap Catesby Jones respectfully represents, that he feels aggrieved by a judgment of the circuit court of the United States, for the fourth circuit and eastern district of Virginia, rendered on the 7th of June, 1842, against your petitioner, for the sum of $4,387 $\frac{09}{100}$, with interest from the 31st August, 1839, till paid, which will appear by the accompanying record of the judgment aforesaid, which judgment your petitioner is advised is erroneous, in this:

That the said court erred in granting the instruction to the jury prayed for by the attorney for the United States, and refusing the several instructions prayed for by your petitioner on the trial of said cause.

Your petitioner therefore prays, that he may be allowed a writ of error to the judgment aforesaid, and that the same may be reviewed and reversed, &c., &c.

THOMAS AP CATESBY JONES,
by counsel.

The clerk of the circuit court, of the eastern district of Virginia, is directed to issue the writ of error, according to the prayer of this petition.

R. B. TANEY,
Chief Jus. of S. Ct. U. S.

Know all men by these presents, that we, Thomas Ap Catesby Jones and Thomas R. Love, are held and firmly bound, unto the United States of America, in the just and full sum of three hundred dollars; to the payment whereof, we bind ourselves, our heirs, &c., jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 5th day of December, 1844.

The condition of the above obligation is such, that, whereas the above bound Thomas Ap C. Jones hath obtained a writ of error to a judgment of the circuit court of the United States, for the fourth circuit and eastern district of Virginia, recovered against him by the United States of America, on the 7th day of June, A. D. 1842, for the sum of $10,000, but to be discharged by the payment of $4,387 $\frac{09}{100}$, with interest thereon from the 31st day of August, 1839, till paid, and the costs. Now, if the said Thomas Ap C. Jones shall prosecute the said writ of error with effect, or shall well and truly pay to the said United States of America all such damages and costs as shall be awarded against him, if the said judgment shall be affirmed by the Supreme Court of the United States, then the above obligation to be void, else to remain in full force and virtue.

THOS. AP C. JONES, [SEAL.]
T. R. LOVE. [SEAL.]

STATE OF VIRGINIA, *county of Fairfax, to wit:*

Personally appeared before me, Alfred Moss, a justice of the peace in and for the county aforesaid, the within named Thomas Ap Catesby Jones, and Thomas R. Love, his surety, and acknowledged the within obligation to be their act and deed; and the said Thomas R. Love made oath, that, after the payment of all his just debts, and all he is bound for, he is worth the sum of three hundred dollars, the penalty of the within bond.

Given under my hand and seal, this 5th day of December, 1844.

ALFRED MOSS, *J. P.* [SEAL.]

Approved: R. B. TANEY.

[SEAL.] The President of the United States of America, to the honorable the judges of the circuit court of the United States, for the fourth circuit and eastern district of Virginia, greeting:

Because, in the record and proceedings, as also in the giving of the judgment in a certain action of debt, which was, in our said court, before you, depending between the United States of America, plaintiff, and Thomas Ap Catesby Jones, defendant, manifest error hath happened, whereby the said Thomas Ap Catesby Jones is aggrieved, as by his complaint to our Supreme Court of the United States is alleged; we, being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that, if final judgment be thereupon by you given, then to our Supreme Court of the United States of America, un-